

RECLAMATION

Managing Water in the West

TC1 Lateral Easement Crossings Environmental Assessment



U. S. Department of the Interior
Bureau of Reclamation
Lahontan Basin Area Office
705 N. Plaza, Room 320
Carson City, NV 89701

October 2007

ENVIRONMENTAL ASSESSMENT
TC 1 LATERAL EASEMENT CROSSINGS

Lyon County, Nevada

**U.S. Bureau of Reclamation
Lahontan Basin Area Office
Carson City, Nevada**

October 2007

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1.0 INTRODUCTION

1.1 Background

The Bureau of Reclamation (Reclamation) Newlands Project provides water for irrigation and wetlands purposes from the Truckee and Carson Rivers for approximately 57,000 acres in the Lahontan Valley near Fallon and Fernley in western Nevada.

Reclamation has a 60-foot wide easement for the TC1 Lateral located in Fernley, Nevada. Water is diverted from the Truckee Canal into the TC1 and other lateral canals to irrigate land in the Truckee Division of the Newlands Project. The City of Fernley (City) and Southwest Gas Corporation are requesting to cross the TC1 Lateral easement in two locations for installation of two culverts and short sections (60 feet) of a road extension, a road widening, and buried pipelines.

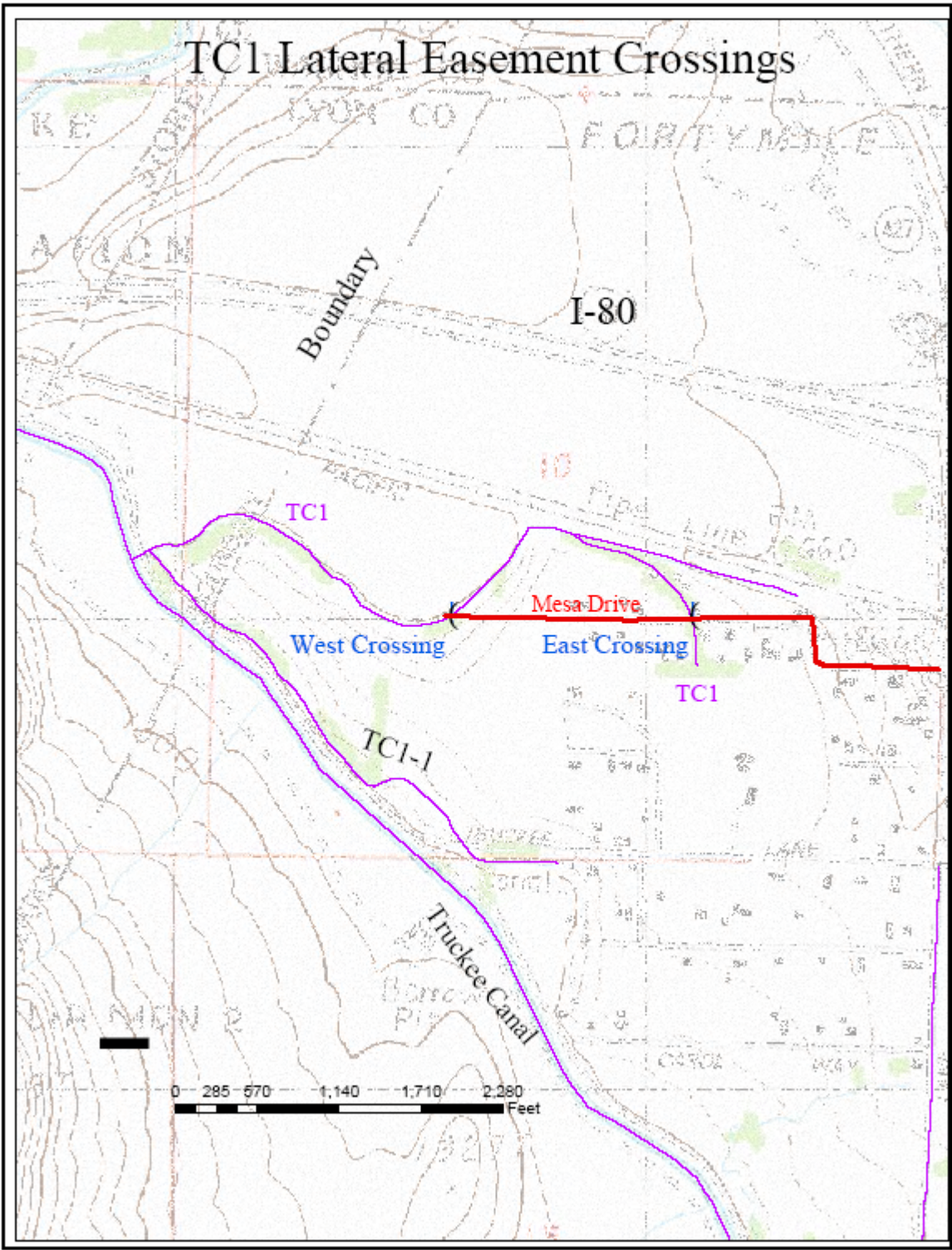
The City is proposing to construct a groundwater treatment plant to produce water that meets the U.S. Environmental Protection Agency arsenic standard for delivery to City customers. The plant is expected to be completed in July 2009. The City proposes a total of approximately 12.7 miles of pipeline to service the groundwater treatment plant. The two 60-foot crossings of Reclamation's TC1 Lateral easement would allow the City and Southwest Gas Corporation to extend pipelines that would provide the plant natural gas service and convey untreated groundwater to the plant and treated water from the plant to City customers. The crossings would also allow extension of Mesa Drive across the 60-foot easement as part of a road extension into the proposed plant location.

The City has reviewed an alternative pipeline route alignment option to access the groundwater treatment plant that would not cross Reclamation's TC1 easement. The City's evaluation of the two pipeline alignments showed the alignment proposed in this Environmental Assessment (EA) that crosses Reclamation's easement is more cost effective and would require less technical engineering and maintenance. However, the alternative route remains an option for the City.

1.2 Location of TC1 Lateral Crossings:

The proposed TC1 Lateral and crossings are located on the western edge of Fernley, Nevada in Lyon County. The crossings are approximately one-quarter mile apart in two different locations adjacent to and at the end of Mesa Drive, a residential road with private homes along both sides of the road. Mesa Drive is east of the Truckee Canal and approximately one-half mile south of Interstate 80. The project is located in the S ½ of Section 10 of T. 20 N., R. 24 E., M. D. B. & M. on the USGS Fernley West, 7.5 minute USGS provisional quadrangle map (1985). Figure 1 shows the proposed crossing locations.

Figure 1. Proposed TC1 Lateral easement crossings



1.3 Easement Crossing Authorization

Reclamation Manual Directives and Standards LND 08-01 - Land Use Authorizations discusses Reclamation's direction related to use of a Reclamation easement as follows:

Agreements to Allow Others to Use a Reclamation Easement – Consent

Document. When any party proposes to cross or use a Reclamation easement, a consent document should be prepared by, or be acceptable to, Reclamation and executed by all parties.

A. **Conditions to protect Reclamation Interests.** The consent document should contain a list of conditions and criteria necessary to:

- (1) Protect all structures, facilities, and resources from damage;
- (2) Ensure unrestricted flow and quality of water in the facility or structure;
- (3) Not diminish the ability to operate and maintain the facility, including access;
- (4) Protect and provide for the unrestricted use of any Reclamation easement, be it for roads, telephone/communication lines, flood and flowage easements, canals, pipelines, gaging stations, or any other purpose;
- (5) Prevent an unreasonable burden of liability; and
- (6) Hold Reclamation harmless as stated in 43 Code of Federal Regulations § 429.

B. **Underlying Fee Owner Permission.** The consent document shall contain a requirement that, in the event the applicant is not the underlying fee owner, it shall be incumbent on the applicant to secure permission of the underlying fee owner for approval to cross or use Reclamation's easement.

C. **Cost Recovery.** When Reclamation enters into or issues a consent document based upon a Reclamation easement interest, it is not appropriate to collect a land use fee. It is appropriate for Reclamation to collect an administrative fee consistent with Office of Management and Budget Circular A-25, as revised. When the applicant is the underlying land owner, recovery of administrative costs can be waived.

As stated above for conditions to protect Reclamation's interests, 43 Code of Federal Regulations § 429.9 **Hold Harmless Clause** states:

(a) The following clause shall be a part of every land-use document issued by Reclamation:

The grantee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, or death arising out of grantee's activities under this agreement.

1.4 Purpose and Need for Action

The purpose of the proposed action is to facilitate the conveyance of untreated/treated water and natural gas to and from the City groundwater treatment plant as well as provide for a section of road extension to access the plant. The City needs to cross the TC1 Lateral canal easement in two locations because it is the most efficient and cost effective pipeline route; the Southwest Gas Corporation pipeline would follow the same route.

1.5 Public Involvement, Consultation and Coordination

Advertisements describing the proposed TC1 Lateral crossings and requesting scoping comments and Draft EA comments were placed in the Fernley Leader – Courier. Press releases on the proposed project requesting comments were also released on to Reclamation’s Regional “Mid-Pacific All the News” list. The list consists of television, radio, newspapers, and regional entities interested in Reclamation’s actions. Three residents called to ask questions about the project.

A consultation letter dated July 30, 2007 requesting scoping comments on the proposed crossings was sent to the Pyramid Lake Paiute Tribe (Tribe) pursuant to federal legislation and executive orders concerning Native American government-to-government consultation, including NEPA and Indian Trust Assets. A letter dated August 6, 2007 was also sent to the Tribe by Reclamation’s Regional archaeology staff in accordance with 36 CFR Part 800.4(a)(4) requesting information regarding sites of religious or cultural significance. Reclamation did not receive comments from the Tribe on either letter.

The draft EA and a letter requesting EA review and comments were provided to the Tribe on August 27, 2007. The Tribe provided comments on the Draft EA (Appendix A). Reclamation prepared a response to the comments (Appendix B).

Reclamation has coordinated with both the City and Southwest Gas Corporation on the technical aspects of the project and Reclamation requirements for the crossing. Both entities coordinated on engineering aspects of the crossings with the Truckee-Carson Irrigation District, Reclamation’s Newlands Project Operation and Maintenance contractor.

2.0 ALTERNATIVES

Reclamation is analyzing the impact of installing two culverts and short sections (60 feet) of a road extension, a road widening, and buried pipelines as requested by the applicants.

The Tribe provided comments on the Draft EA and requested that the NEPA document have an alternative that would analyze the development of the City’s proposed plant in an Environmental Impact Statement. Reclamation did not analyze the plant development in the NEPA document because Reclamation considers the groundwater treatment plant to be outside the scope of the purpose and need for the federal action being undertaken by Reclamation.

2.1 Alternative 1 - Proposed Action:

Reclamation would provide concurrence for crossing Reclamation's 60-foot wide easement for the TC1 Lateral irrigation canal in two locations. One of the crossings is at the west end of Mesa Drive where the road currently dead-ends and the other is approximately ¼ mile to the east. Both TC1 Lateral crossings would encompass an area approximately 20 feet in width and 60 feet in length.

West Mesa Drive TC1 Lateral Crossing (Figure 2 and 3):

The western crossing would involve trenching to bury four types of pipelines beneath the TC1 canal; the total length of pipelines located within the Reclamation easement would be 60 feet.

The four types of pipelines are as follows:

1. 30-inch diameter pipe for raw groundwater to be piped to the groundwater treatment facility
2. 42-inch diameter pipe for treated water leaving the facility
3. A 10-inch diameter sewer line servicing the facility
4. Two 2-inch diameter natural gas pipelines servicing the facility

After the pipes are buried, a box culvert would be installed spanning the TC1 Lateral. The culvert would be 50 feet long, 5 feet wide and 4 feet high. On top of the culvert a 24-foot wide paved road with 4-foot shoulders would be installed to extend Mesa Drive into the future groundwater treatment plant. Sixty feet of the road extension would be within Reclamation's easement.

East Mesa Drive TC1 Lateral Crossing (Figure 4 and 5):

The eastern crossing parallels Mesa Drive and would have the same types of pipelines as described above except there would be no natural gas pipeline. The total length of pipelines within the Reclamation easement would also be 60 feet. The existing culvert would be removed during the trenching to bury the pipes; after the pipes are buried a 36-inch diameter culvert, 60 feet long would be installed in the location of the previous culvert. On top of the culvert the existing road would be widened to 24 feet with 4-foot shoulders.

It is estimated that construction related to the western crossing would begin in fall 2007 and take up to four months to complete. The eastern crossing would be constructed during 2008. The construction for both crossings would be performed in seven-day increments if constructed during the irrigation season to avoid any conflicts with irrigation deliveries.



Figure 2. Location of proposed TC1 Lateral west crossing



Figure 3. Location of proposed extension of Mesa Drive across the TC1 Lateral



Figure 4. Proposed TC1 Lateral crossing location at east Mesa Drive



Figure 5. Location of proposed buried pipelines at TC1 Lateral east crossing.

Reclamation would not conduct an engineering review of the project and merely would grant concurrence for construction within the Newlands Project easement. The easement would continue to be held in the name of the United States. The City and Southwest Gas and their contractors would be responsible for construction, operation and maintenance of their operations. The City and Southwest Gas would be responsible for obtaining any necessary State and local permits. Reclamation and the Truckee-Carson Irrigation District would maintain the right of access to operate and maintain the TC1 Lateral.

2.2 Alternative 2 - No Action:

Reclamation would not provide concurrence to allow the City and Southwest Gas Corporation to cross Reclamation's 60-foot wide TC1 easement in two locations to bury pipes or widen and extend Mesa Drive. The City and Southwest Gas Corporation could use their alternate pipeline and road extension routes that do not cross the Reclamation easement.

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

Environmental resources potentially impacted by the alternatives and other issues of concern are described in this section. The impacts include identifying any direct, indirect, or cumulative effects.

3.1 Site Description/Affected Environment:

The TC1 Lateral irrigation canal is an open earthen ditch that has minimal intermittent water deliveries. The TC1 Lateral averages approximately 15 feet in width and five feet in depth. The lateral has sandy bare areas devoid of vegetation and other areas with a variety of native and weed vegetative species growing in and adjacent to the canal.

The TC1 Lateral crosses under Mesa Drive via a corrugated culvert pipe at the location of the eastern crossing. The TC1 Lateral at this eastern crossing is in a residential area with mature cottonwood trees. The crossing location of the lateral is bare dirt with sparse amounts of low growing grass and morning glory ground vine weeds.

The western crossing at the end of Mesa Drive is flanked by a graded sandy dirt road on one side and an open upland desert scrub community on the other side. The crossing location of the lateral has sagebrush, Russian thistle, tall whitetop, and a cottonwood tree sapling in the canal.

3.2 Environmental Consequences:

The following resources are not discussed in this EA: economics, hydrology, climate, soils, floodplains and wetlands, fisheries, geology, mineral resources, recreation, land use, topography, energy, or hazardous waste. Impacts to these resources were considered but not analyzed in detail because they are not affected by the project.

3.2.1 No Action Alternative:

There would be no effects and no change from current conditions from the No Action Alternative to any of the resources analyzed in this EA.

3.2.2 Proposed Action Alternative:

3.2.2.1 Wildlife

During the construction of the trench and roads and burying of the pipes local wildlife may be displaced by the noise and disturbance. These potential effects to wildlife would be minimal and temporary.

3.2.2.2 Threatened and Endangered Species

There are no threatened or endangered species within either the 20-foot by 60-foot footprint or within the proximity of the crossings.

3.2.2.3 Water Resources

There would be no impacts to groundwater from the pipeline and road construction activities of the Proposed Action Alternative. Sedimentation may increase slightly to the surface irrigation water from loosened soil during construction; however the amount would be temporary and minimal. Construction would occur in seven-day increments to avoid any conflicts with irrigation deliveries.

3.2.2.4 Air Quality

Current air quality in the project area is good. Under the Proposed Action, there may be temporary small increases in fugitive dust emissions from construction activities. These dust emissions will be short-term and occur only during construction hours.

3.2.2.4 Noise

The current noise levels in the project area are very low. It is a residential area and the ambient noise is primarily from residential activity and the nearby railroad track. Under the Proposed Action Alternative noise levels will increase temporarily during the period of construction due to the use of heavy equipment, but only during construction hours.

3.2.2.6 Vegetation

The vegetation in the lateral currently consists primarily of low priority weed species (morning glory ground vine, Russian thistle, and grasses), a noxious weed (tall whitetop) and some native endemic species (sagebrush, narrow leaf willow and cottonwood). The Proposed Action will likely completely remove the vegetation within the 20-foot by 60-foot footprint at each of the two crossing locations during construction. This ground disturbance will likely encourage a heavier infestation of weeds in the construction footprint area.

3.2.2.7 Visual Resources

Under the Proposed Action alternative there will be heavy equipment activity visible at the two project sites during construction. After the completion of construction, there will be a road extension spanning the TC1 Lateral at the west end of Mesa Drive. The visual effect from construction will be temporary, until construction of the bridge and canal crossing is completed. The visual effect of the presence of the road extension at the western Mesa Drive location will be minor. The only visual effect from the canal crossing at the eastern Mesa Drive location after construction will be a minor modification in the vegetation growing in the lateral in the construction footprint.

3.2.2.8 Transportation

Under the Proposed Action the construction of the pipeline trench, road widening and road crossing will cause a temporary increase in traffic during construction hours.

3.2.2.9 Historic and Cultural Resources

An archaeological field inspection and survey of the two crossings designed to comply with Section 106 of the National Historic Preservation Act were conducted on July 25, 2007. No cultural resources were identified within the area of potential affect. Reclamation consulted with the State Historic Preservation Office and received concurrence that modification of the TC1 easement for the crossings will not affect any historic properties.

The TC1 lateral is less than one mile in length. Significance criteria have been developed determining that laterals less than one mile long are not contributing to the Newlands Project Multiple Property Listing of the National Register of Historic Places.

3.2.2.10 Indian Trust Assets

Indian Trust Resources are legal interests in property or natural resources held in trust by the United States for Indian Tribes or individuals. The Secretary of the Interior is the trustee for the United States on behalf of Indian Tribes. Examples of trust resources are lands, minerals, hunting and fishing rights, and water rights. There is one Tribe in the vicinity of the proposed crossings, the Pyramid Lake Paiute Tribe; the Pyramid Lake Indian Reservation is approximately 0.3 mile from the west crossing and 0.5 miles from the east crossing. There are no trust resources within the affected area of the TC1 Lateral easement crossings.

3.2.2.11 Environmental Justice

Executive Order No. 12898, Environmental Justice, is “intended to promote nondiscrimination in Federal programs substantially affecting human health and the environment, and to provide minority and low-income communities’ access to public information on, and an opportunity for participation in, matters relating to human health and the environment.” It requires each federal agency to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects, including social and economic effects, of its programs, policies, and activities on minority and low-income populations.

EPA guidelines for evaluating potential adverse environmental effects of projects require specific identification of minority populations when a minority population either exceeds 50 percent of the population of the affected area or represents a meaningfully greater increment of the affected population than of the population of some other appropriate geographic unit.

The Proposed Action Alternative would not disproportionately affect minority or low-income populations within the community.

4.0 OTHER NEPA CONSIDERATIONS

4.1 Indirect Effects

The indirect effects of the proposed action are related to the road crossing of Reclamation's TC1 easement at the West Mesa Drive Crossing. Allowing the crossing will result in the use of Mesa Drive to access the groundwater treatment plant. Indirect effects of the access road in this location include minor amounts of long-term increased traffic, short-term construction traffic, and occasional truck traffic hauling chemicals that will be used at the groundwater treatment plant.

The City of Fernley commissioned a traffic impact analysis. That analysis, dated May 25, 2007, analyzed the traffic from the anticipated number of employees and types of traffic that would be associated with the groundwater treatment plant. During the first year of the facility's operation 3 - 5 employees would work during the day shift and 1 - 2 employees would work on the night shift. The system will be automated after the first year and the number of employees will decrease to about 2 - 3 during the day only. Typically, tanker trucks would deliver chemicals twice a month and UPS/FedEx deliveries would occur once per day. The traffic impact analysis found there would be no major increased traffic impact at the intersection of West Main Street and Mesa Drive. There will be a slight increase in traffic on the length of Mesa Drive to the proposed facility over that currently being experienced. This represents a slight increase that is only a minor adverse impact in the area.

The chemicals being carried by the tanker trucks are ferric chloride, sodium hydroxide, sodium hypochlorite, and citric acid. The City consulted the Nevada Department of Environmental Protection (NDEP) on the preparation of a Chemical Accident Prevention Plan (CAPP). A CAPP must be prepared for facilities that have select, highly hazardous substances in quantities above defined thresholds. These highly hazardous substances are distinguished from numerous other regulated substances in that they will cause acute health impacts from a relatively short-term, low-concentration exposure. None of the chemicals carried by the tanker trucks are found on NDEP's listing of hazardous substances. A CAPP is not required for this project.

4.2 Cumulative Effects

The proposed groundwater treatment plant is a phased project with substantial completion expected in July 2009. Additional production wells are being investigated to provide groundwater to the plant. Once the wells are identified and a conveyance design configuration is finalized for pipelines to transport untreated groundwater to the plant, additional crossings of Reclamation easements may be requested in the future. If additional crossings are requested, the environmental effects of the crossings would likely be similar to the minor impacts identified in this EA and cumulatively would not be significant.

4.3 Irreversible and Irretrievable Commitments

Irreversible commitments are decisions affecting renewable resources such as soils, wetlands and waterfowl habitat. Such decisions are considered irreversible because their implementation would affect a resource that has deteriorated to the point that renewal can occur only over a long period of time or at great expense, or because they would cause the resource to be destroyed or removed.

Irretrievable commitment of natural resources means loss of production or use of resources as a result of a decision. It represents opportunities forgone for the period of time that a resource cannot be used. Irretrievable refers to the permanent loss of a resource including production, harvest, or use of natural resources. For example, production or loss of agricultural lands can be irretrievable, while the action itself may not be irreversible.

The crossings would not result in any operational changes or other physical impacts that would irreversibly or irretrievably commit renewable resources from this federal action.

5.0 LIST OF PREPARERS

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RECEIVED

SEP 14 2007

BUREAU OF RECLAMATION
 Lahontan Basin Area Office

September 14, 2007

**RE: [CORRECTION] Comments on TC1 Lateral Easement Crossing Draft
 Environmental Assessment – City of Fernley and Southwest Gas Corporation**

Dear Ms. Rieke,

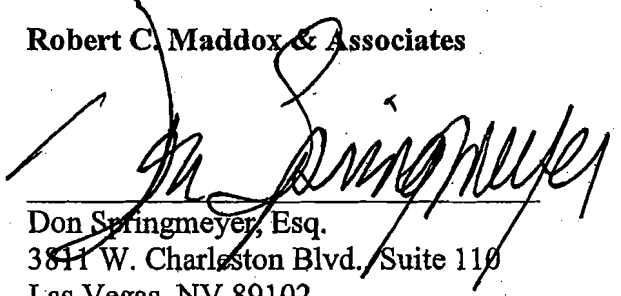
As you know, yesterday, September 13, 2007, the Pyramid Lake Paiute Tribe of Indians (Tribe) submitted comments on the Draft EA for the City of Fernley's request for a right-of-way crossing over the Bureau of Reclamation's TC1 Lateral Easement. We have noted an error in those comments, which we would like to correct for the record by way of this letter.

On Page 1 of the Tribe's comments, the reference to Judge Lloyd D. George's Order of March 17, 2007, used the wrong name for the case, and in effect incorrectly stated that the Bureau of Reclamation was involved in that lawsuit. For the record, the case was *Pyramid Lake Paiute Tribe of Indians v. Bureau of Land Management*, Case No. 2:06-cv-1293-LDG. The Bureau of Reclamation was not a party to that case, but rather the Bureau of Land Management was. The Tribe apologizes for the error.

Sincerely,

Robert C. Maddox & Associates

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September 13, 2007

**RE: Comments on TC1 Lateral Easement Crossing Draft Environmental Assessment –
City of Fernley and Southwest Gas Corporation**

Dear Ms. Rieke,

Please accept these comments on behalf of the Pyramid Lake Paiute Tribe of Indians (Tribe). The Tribe has concerns regarding the Bureau of Reclamation's (Reclamation) Draft Environmental Assessment (Draft EA) for the proposed TC1 Lateral Easement Crossing (Project) requested by the City of Fernley and Southwest Gas Corporation.

A. Introduction

The Tribe's primary concern regarding this Project is that Reclamation has failed to adequately consider the indirect and cumulative impacts of the Project, particularly in light of the fact that this Project is but one small part of a much larger project to be undertaken by the City of Fernley. Fernley is proposing to build a Water Treatment Plant (WTP), which is likely to use water from the Newlands Project for municipal and industrial purposes. The Tribe is concerned with Reclamation's piecemeal approach under NEPA to the larger project of which the instant Project and associated Draft EA are only a small part. In the Tribe's opinion, Reclamation should consider the City of Fernley's entire WTP project in one comprehensive Environmental Impact Statement, as opposed to the piecemeal NEPA review represented by this instant Draft EA.

The Project analyzed in the Draft EA is only one small portion of a much larger, and very controversial, project. This larger WTP project is likely to have significant environmental impacts, and will therefore require the preparation of an Environmental Impact Statement (EIS). The environmental analysis contained in the Draft EA of the TC1 Lateral Easement Crossings should be made a part of the larger EIS, and not considered separately. By way of example, the Tribe would like to point Reclamation to an Order granting a preliminary injunction in favor of the Tribe in a prior lawsuit against Reclamation over its NEPA analysis and Record of Decisions granting rights-of-way for a different water pipeline project. In that case, *PLPTI v. Bureau of Reclamation*, Case No. 2:06-cv-1293-LDG, Judge Lloyd D. George found that the Tribe was likely to win on the merits of its claim that the EIS for the rights-of-way was deficient for failing to consider the cumulative and indirect environmental impacts of wastewater discharge into the Truckee River. See attached Order at 3-6 (March 17, 2007).

PLPTI Comments on LC1 Lateral Easement Crossing Draft EA
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B. The 'Purpose and Need' Statement and Alternatives Analysis are Inadequate.

At Section 1.4, the Draft EA explains that the purpose and need of the Project is "to facilitate the conveyance of untreated/treated water and natural gas to and from the City water treatment plant. . . ." Given that Newlands Project water authorized for irrigation purposes is likely to be used to supply the City's WTP and ultimately put to municipal and industrial use, the Draft EA's 'purpose and need' statement is much too narrow. By narrowly defining the purpose of the Project, the authors of the Draft EA are able to claim that there are fewer indirect and cumulative effects of the Project. Because the 'purpose and need' of this project is so narrowly drawn, the Draft EA fails to consider the indirect and cumulative effects of changing Newlands Project water from agricultural use and placing it to municipal and industrial use. The Draft EA should identify the scope of the larger WTP project, and give it the proper analysis as required under NEPA and its implementing regulations.

The Draft EA's alternatives analysis, at Section 2.0, does not provide a thorough examination of possible alternatives to the Project. The "Proposed Action" and "No Action" alternatives are the only alternatives discussed in any detail in the Draft EA. More information should be provided about possible alternatives to the Project, in the context of the larger WTP project.

C. The Draft EA Fails to Adequately Address the Environmental Consequences of the City of Fernley's WTP.

Because the Draft EA does not address the larger project being proposed by the City of Fernley—the construction of a WTP to treat Newlands Project water for municipal and industrial uses—it fails to adequately address the potential environmental consequences of the Project. At Section 3.2, the EA explicitly states that it does **not discuss** economics, hydrology, climate, soils, floodplains and wetlands, fisheries, geology, mineral resources, recreation, land use, topography, energy, or hazardous waste. Had Reclamation considered this Project in context with the larger WTP project, it would have discovered that these environmental features that are not discussed in the Draft EA may entail potential adverse consequences from both the granting of a right-of-way to the City of Fernley over the LC1 Lateral and from the larger WTP project, given the likelihood that it will use irrigation water from the Newlands Project for municipal and industrial purposes.

While the Draft EA does mention threatened and endangered species, at Section 3.2.2.2, its analysis is weak, stating simply: "There are no threatened or endangered species within either the 20-foot by 60-foot footprint or within the proximity of the crossings." This statement shows that the scope of the Draft EA's consideration is much too narrow. Under NEPA, a federal agency is required to consider not just the direct impacts of the proposed action, but also its indirect and cumulative effects. Thus, the EA should have discussed the potential environmental consequences to threatened and endangered species not just within the immediate 'footprint' of the crossings, but also to any such species that may be impacted by the larger WTP project. Clearly, the Draft EA has failed to do this, and a more comprehensive analysis should be given to this subject.



PLPTI Comments on LC1 Lateral Easement Crossing Draft EA

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At Section 3.2.2.3, the Draft EA states: "There would be no impacts to groundwater from the construction activities of the Proposed Action Alternative." As stated previously in these comments, the Draft EA should consider more than the narrow Project stated in the 'purpose and need' statement—it should consider the larger impacts, both indirect and cumulative, of the proposed WTP on water resources. Among other things, the Draft EA should consider whether the Fernley groundwater basin provides a sustainable source of water for Fernley's current and/or future needs. The Draft EA should contain an analysis of the surface and groundwater impacts of the City's WTP.

D. Reclamation Must Do More to Meet its Trust Obligations to the Tribe.

As stated in the Draft EA, "[t]he Secretary of the Interior is the trustee for the United States on behalf of Indian Tribes." Section 3.2.2.10. Because the EA's 'purpose and need' statement is too narrow, which leads the authors of the EA to fail to appreciate and analyze the effects of the larger WTP project, the EA concludes that "[t]here are no trust resources within the affected area of the TC1 Lateral easement crossings." *Id.* This is an unfortunate and misleading statement. There are several trust resources that stand to be affected by the Project and the larger WTP project of which it is a part.

The trust assets affected by this Project are the Pyramid Lake fishery, Pyramid Lake and the lower Truckee River. The manner in which the City of Fernley's municipal and industrial water needs are met will affect these trust assets of the Tribe. To fulfill its trust responsibility, Reclamation therefore should consider Fernley's proposed WTP project comprehensively, so that it may select the alternative that best comports with its fiduciary obligations to the Tribe as the Tribe's trustee.

E. The Draft EA Must Consider the Indirect Effects and Cumulative Impacts of the Project.

At Section 4.1, the Draft EA states that "[t]he proposed water treatment plant is a phased project with substantial completion expected in July 2009 [and] additional crossings of Reclamation easements may be requested in the future." Because Reclamation is aware that this Project is part of the City of Fernley's larger WTP project, it is incumbent upon Reclamation to consider this Project in the context of that larger project. NEPA requires an agency to consider not just the project itself, but all reasonably foreseeable future projects as well. The larger WTP project is clearly 'reasonably foreseeable.' Unfortunately, although the 'Cumulative Impacts' of the Draft EA clearly anticipates the larger WTP project, it provides absolutely no analysis of what the cumulative impacts or indirect effects of the granting the City's request would be in light of the larger project.



PLPTI Comments on LC1 Lateral Easement Crossing Draft EA
Page 4 of 4**F. Conclusion**

In conclusion, the Tribe is concerned that Reclamation is undertaking piecemeal environmental analysis of the City of Fernley's Water Treatment Plant proposal, at the expense of the required comprehensive environmental analysis contemplated by NEPA. In addition, the Draft EA for the TC1 Lateral Easement Crossings does not provide any details regarding the WTP proposed by the City of Fernley, including its location, the alignment of proposed raw water and treated water pipelines to and from the proposed plant, sewer lines, power lines, gas lines, roadways, brine removal and disposal, wastewater storage or conveyance pipelines, or any other facilities associated with the proposed WTP that would require more intense environmental review. As it exists on its own, the Draft EA does not allow for an understanding of how the TC1 Lateral Easement Crossing specifically relates to the potential environmental consequences of the entire WTP project.

The Tribe respectfully requests that this Draft EA be the starting point for the more comprehensive NEPA analysis of Fernley's WTP project, as is required by NEPA and its implementing regulations.

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**PYRAMID LAKE PAIUTE TRIBE OF
INDIANS,**

Plaintiff,

v.

**BUREAU OF LAND MANAGEMENT of
the U.S. DEPARTMENT OF THE
INTERIOR, AND U.S. DEPARTMENT
OF THE INTERIOR,**

Defendants.

Case No. 2:06-cv-1293-LDG (LRL)

ORDER

The plaintiff, Pyramid Lake Paiute Tribe of Indians (the Tribe), brought this suit to challenge the decision of the defendants, the Bureau of Land Management of the United States Department of the Interior, and the Department of the Interior (collectively, the BLM), to grant rights-of-way that would allow two companies to build water pipelines across federal public lands.

In the present motion for a preliminary injunction, the Tribe seeks to preliminarily enjoin any further activity regarding construction of the pipelines pending a final decision in this matter on whether the BLM's Final Environmental Impact Statement violates the

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1 National Environmental Protection Act. Having considered the pleadings, papers, and
2 arguments of the parties, the court will grant the preliminary injunction.

3 Background

4 In 2003, two entities, Fish Springs Ranch, LLC, and Intermountain Water Supply,
5 Ltd., applied to the Bureau of Land Management for rights-of-way to construct underground
6 water pipelines across federal public land. The purpose of the pipelines is to supply water
7 to the "North Valleys Area" of Washoe County (the area north of Reno and Sparks). The
8 Fish Springs Ranch pipeline proposes to transport 8,000 acre feet of groundwater per year
9 drawn from six wells in the Honey Lake Valley. The Intermountain Water pipeline proposes
10 to transport 2,500 acre feet of groundwater per year from five wells in Dry Valley and two
11 wells in Badell Flat.

12 The BLM prepared a single Final Environmental Impact Statement analyzing both
13 applications. The Tribe participated as a cooperating agency, providing comments to the
14 BLM. The BLM issued its Draft Environmental Impact Statement in May 2005, and its Final
15 Environmental Impact Statement in October 2005. The BLM then issued its Records of
16 Decision granting the two applications for the rights-of-way on May 31, and June 23, 2006.

17 The Tribe contends that issues raised during the process of preparing the Final
18 Environmental Impact Statement were not addressed. Specifically, the Tribe asserts that
19 the Final Environmental Impact Statement did not:

20 1) Identify or evaluate the adverse environmental impact on the Truckee River
21 and Pyramid Lake from the treatment and discharge of wastewater generated by the
22 projects;

23 2) Identify or consider the mitigation measures to lessen or avoid the adverse
24 environmental impacts associated with this treatment and discharge of wastewater; and
25 Environmental Impact Statement in October 2005.

26 3) Adequately evaluate mitigation measures to lessen or avoid the adverse
27 impact of pumping groundwater from Honey Lake Valley on Pyramid Lake and two

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1 groundwater aquifers within the Pyramid Lake Indian Reservation. (The Tribe
2 acknowledges that the Final Environmental Impact Statement adequately identified this
3 adverse impact, but argues that the Statement did *not* adequately discuss mitigation of this
4 adverse impact.)

5
6 Standard for Granting a Preliminary Injunction.

7 In determining whether to grant a preliminary injunction, this court must consider the
8 likelihood that the moving party will succeed on the merits; the possibility that it will suffer
9 irreparable injury if the injunction is not granted; a balancing of the hardships that considers
10 this harm to the plaintiff against the harm imposed on the non-moving party if the injunction
11 is granted; and (in appropriate cases) the public interest. See *Earth Island Institute v. U.S.*
12 *Forest Service*, 351 F.3d 1291, 1297-98 (9th Cir. 2003); *Stanley v. Univ. of Southern*
13 *California*, 13 F.3d 1313, 1319 (9th Cir. 1994). The moving party satisfies these factors by
14 showing "either (1) a combination of probable success on the merits and the possibility of
15 irreparable injury, or (2) that serious questions are raised and the balance of hardships tips
16 sharply in favor of the moving party." *Stuhlberg Intern. Sales Co., Inc. v. John D. Brush*
17 *and Co., Inc.*, 240 F.3d 832, 839-40 (9th Cir. 2001). To be certain, these alternatives do not
18 describe separate tests, but merely the "extremes of a single continuum." *Clear Channel*
19 *Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003).

20
21 Success on the Merits

22 The National Environmental Protection Act requires that, before taking a proposed
23 action that will significantly affect the quality of the human environment, a federal agency
24 must take a "hard look" at those environmental consequences. 42 U.S.C. §4332(2)(C);
25 *Roberston v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). The Act does
26 not require any specific result of this "hard look," but only that the process of taking a hard

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1 look is followed. *Inland Empire Public Lands Council v. United States Forest Service*, 88
2 F.3d 754, 758 (9th Cir. 1996). "[A]n agency is entitled to wide discretion in assessing the
3 scientific evidence, so long as it takes a hard look at the issues and responds to
4 reasonable opposing viewpoints. See 40 C.F.R. § 1502.9(a)-(b)." *Earth Island*, 351 F.3d
5 at 1301.

6 The Tribe's first contention is straightforward, that the Final Environmental Impact
7 Statement lacks an adequate identification of wastewater treatment and discharge in the
8 North Valleys area. The Tribe suggests that the Final Environmental Impact Statement
9 makes only "two vague and general references to wastewater disposal issues" at pages 4-
10 13 and 4-111.¹ The Environmental Protection Agency, which rated the Draft Environmental
11 Impact Statement as "EC-2 - Environmental Concerns - Insufficient Information,"
12 specifically noted that the

13 EPA is concerned about the potential impacts of the project on surface
14 water and groundwater quality and quantity in the service area. However, the
15 DEIS does not sufficiently address impacts to these resources

16 Recommendation: The FEIS should describe and
17 discuss how growth in the service areas will affect surface water
18 and groundwater quality and quantity after build out. We
19 recommend that the BLM work with the appropriate local
20 agencies to obtain information on the project's potential impacts
21 to the following resources, and mitigation measures to avoid or

22 ¹ The relevant language from page 4-13 states as follows:
23 "Construction of housing, roads, and community infrastructure to support
24 build-out would result in increased water use and waste water disposal in the
25 developed areas. Increased populations in the Service Area would result in
26 several potential water-related effects, including . . . increased nutrient
loading to groundwater and possibly surface water from infiltration of septic
water"

27 The relevant language from page 4-111 states as follows:
28 "Increases in population associated with development in the Stead/Lemmon
Valley Area as a result of the proposed Projects combined with current and
reasonably foreseeable development associated with importation of more
water . . . would result in several potential water-related cumulative effects, . .
Increased nutrient loading to groundwater and possibly surface water;
erosion and sedimentation from construction activities; and increased surface
water runoff."

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1 minimize those impacts. The FEIS should address the following
2 issues:

- 3 • Truckee River and Pyramid Lake water quality and quantity;
4 Existing and future groundwater quality resulting from septic
5 tanks and waste water treatment facilities in the North Valleys
6 where project water will be distributed;
- 7 • Waste water treatment and discharge capacity and the impacts
8 of waste water discharges on receiving waters, including
9 domestic wells in the distribution areas . . .

10 Other than the two passages identified by the Tribe, the Court cannot locate any
11 other passages of the Final Environmental Impact Statement that could be construed as
12 describing and discussing wastewater discharge. For its part, the BLM notes the following
13 portions of the Final Environmental Impact Statement that could be construed as
14 addressing mitigation. At page 1-7, the Final Environmental Impact Statement noted that
15 the Nevada State Engineer's ruling granting the Fish Springs Ranch water transfer
16 application included the condition that "[w]ater quality standards shall not be violated." At
17 page 3-35, the Final Environmental Impact Statement noted that "Nevada surface water is
18 regulated for quality standards established by the State of Nevada under the Nevada
19 Water Pollution Control regulations and statutes." The Final Impact Statement provides
20 Table 3-5 at page 3-36 summarizing "Water Quality Criteria and Standards for Nevada." At
21 page 3-71, the Final Environmental Impact Statement notes, "Sanitary sewer in the Plan
22 area consists of individual septic systems and community sewer services provided by
23 Washoe County and the City of Reno. Residential development in the area must meet
24 County standards requiring a sanitary sewage system capable of handling a minimum of
25 325 gallons per day per dwelling unit."

26 The court cannot locate any portion of the Final Environmental Impact Statement
27 that addresses Truckee River and Pyramid Lake water quality and quantity relative to
28 wastewater treatment and discharge from the North Valleys area. Other than the short
29 description of sanitary sewer service at page 3-71, the Court cannot find any description or
30 discussion of existing and future groundwater quality resulting from septic tanks and waste
31 water.

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1 water treatment facilities. The court also cannot locate any description or discussion of
2 waste water treatment and discharge capacity and the impacts of waste water discharges
3 on receiving waters in the Final Environmental Impact Statement.

4 Accordingly, at this time, the Court concludes that the Tribe has shown a very strong
5 probability of succeeding on the merits of its claim that the BLM did not take the requisite
6 "hard look" at the issue of waste water treatment and discharge. Lacking a sufficient
7 identification of this issue within the Final Environmental Impact Statement, the Court
8 would also conclude that the Tribe has shown a strong probability of succeeding on the
9 merits of its claim that the BLM did not adequately address mitigation of this waste water
10 treatment and discharge.

11 waste water treatment and discharge capacity.

12 Irreparable Injury

13 The issue whether the Tribe has met its burden of showing an irreparable injury
14 presents a somewhat closer question. Given that the Tribe has shown a strong probability
15 of succeeding on the merits, its burden of showing an irreparable injury is considerably
16 lightened. In the context of an action challenging a Final Environmental Impact Statement,
17 the Ninth Circuit has observed:

18 The Supreme Court has rejected a presumption of irreparable injury
19 when an agency fails to evaluate thoroughly the environmental impact of a
20 proposed action. See *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531,
21 545, 107 S.Ct. 1398, 94 L.Ed.2d 542 (1987). However, the Court also has
22 observed that "[e]nvironmental injury, by its nature, can seldom be adequately
remedied by money damages and is often permanent or at least of long
duration, i.e., irreparable." *Id.* "Consequently, when environmental injury is
'sufficiently likely, the balance of harms will usually favor the issuance of an
injunction to protect the environment.'"

23 *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000). The Final
24 Impact Statement itself recognizes that importation of water through the proposed pipelines
25 will increase nutrient loading to groundwater and possibly surface water from infiltration of
26 septic water (although it fails to describe or discuss the extent of this nutrient loading). It

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1 would appear to the court that the possibility of nutrient loading to surface water (which
2 water drains to the Truckee River and Pyramid Lake) as the result of infiltration of septic
3 water is a sufficiently likely environmental injury to establish that the balance of harms
4 favors the issuance of a preliminary injunction. Accordingly,

5 THE COURT ORDERS that the Pyramid Lake Paiute Tribe's Motion for a
6 Preliminary Injunction (#6) is GRANTED as follows:

7 The Defendants are hereby preliminarily enjoined from implementing,
8 or further implementing, the May 31, or June 23, 2006, Records of Decision
9 for the Water Pipeline Projects, including any and all construction and other
10 ground-disturbing activity, unless and until such time as this Court enters a
11 final determination on the merits of the question whether the Defendants
12 have completed a lawful Final Environmental Impact Statement that complies
13 with the substantive and procedural requirements of the National
14 Environmental Protection Act.

15 Preliminary Injunction (#6) is GRANTED as follows:

16 DATED this 17 day of March, 2007.


Lloyd D. George
United States District Judge

Appendix B

**Response to Pyramid Lake Paiute Tribe of Indians September 13, 2007 Comments
on the TC1 Lateral Easement Crossing Draft EA**

Assumptions:

It is assumed that in the Tribe's letter that the word "Project" and "instant Project" refer to the TC1 Lateral Crossing action and not the City of Fernley (City) Water Treatment Plant (WTP).

Summary of Tribe Comments on the Draft EA:

The Tribe's letter states that they believe Reclamation should consider the City's entire WTP project in one comprehensive Environmental Impact Statement (EIS), rather than just the TC1 crossings action analyzed in the Draft EA. The Tribe believes the EIS is required because the WTP would have significant environmental effects; analyzing only the TC1 crossings and not the entire WTP results in a piecemeal approach to NEPA. By way of example, the Tribe would like to point Reclamation to an Order granting a preliminary injunction in favor of granting rights-of-way for a different water pipeline project.

The Tribe believes that by not including an environmental analysis of the WTP, the Draft EA is inadequate in the following areas that address only the TC1 Crossing:

- **The Purpose and Need Statement is too narrow and inadequate; it should include the scope of the larger WTP project.**
- **More information should be provided about possible alternatives to the Project, in the context of the larger WTP project.**
- **The EA fails to adequately address the environmental consequences, including indirect and cumulative impacts, of the Project because it doesn't analyze the WTP project (e.g., groundwater and surface water). The EA lists environmental resources that aren't applicable to the crossings and therefore not analyzed in the EA; these resources should be analyzed for the WTP.**
- **The scope of the EA is too narrow related to the Threatened and Endangered Species analysis. The EA should discuss impacts outside of the immediate crossings footprint.**
- **The trust assets affected by this Project [if the WTP were analyzed] are the Pyramid lake fishery, Pyramid Lake and the lower Truckee River. The manner in which the City of Fernley's municipal and industrial water needs are met will affect these trust assets of the Tribe.**
- **The Draft EA does not provide any details regarding the WTP, including its location, the alignment of proposed raw water and treated water pipelines to and from the proposed plant, sewer lines, power lines, gas lines, roadways, brine removal and disposal, wastewater storage or conveyance pipelines, or any other facilities associated with the proposed WTP.**

Response to Summary of Comments:

The Proposed Federal Action is to approve two crossings of the TC1 Lateral Easement. The scope of the NEPA impact analysis for this Proposed Federal Action should not include analyzing development, construction, and operation effects of the City's groundwater treatment plant (GWTP). The GWTP is not located on Reclamation land and is not funded or authorized by Reclamation. The City is the non-federal entity with jurisdiction of the GWTP project. The City along with Southwest Gas Corporation, also a non-federal agency, are requesting to cross a Reclamation easement in two locations for installation of two culverts and short sections (60 feet) of a road extension, a road widening, and buried pipelines. Reclamation's jurisdiction over the easement is a small segment of the overall project. Decisions pertaining to implementation of the GWTP including design, development, construction and operation, are not made by, do not involve, and are not under the control of Reclamation. Reclamation's decision on allowing the crossings of their easement does not result in an action that leads to either constructing or not constructing the GWTP. The plant can, and would be constructed without Reclamation's allowing use of the easement. The proposed federal action to allow crossings of a Reclamation easement does not make construction of the GWTP a federal project.

As identified in section 1.1 of this EA, the City has an alternate route for the pipelines that would not involve crossing Reclamation easements if Reclamation were to deny the requested crossings. The proposed route in the EA that includes crossing Reclamation's easement is a more cost effective route, but is not essential to the implementation of the GWTP. The crossings would not adversely impact Reclamation's easement; therefore Reclamation has no reason to deny the crossing request.

The Tribe contends that it is likely Newlands Project water authorized for irrigation will be identified to be used to supply the water treatment plant and ultimately be put to industrial and municipal use. Reclamation has no jurisdiction or involvement in the design or operation of the GWTP. Use of Newlands Project water is unknown and is outside of the scope of the analysis of the easement crossing. If Newlands Project water was proposed for use at the GWTP in the future, the City would have to go through appropriate processes for that change of use. Allowing the use of Reclamation's easement does not lead to construction of the GWTP or use of Newlands Project water for municipal use.

Reclamation has reviewed its analysis of potential indirect effects and has analyzed those effects that are likely to occur as a result of allowing the use of Reclamation's easement. Construction of the GWTP will occur regardless of whether or not crossing of the federal easement is allowed. Use of the road that will be crossing the easement may result in different uses of the road than its current usage. Those indirect impacts are identified and analyzed in the final EA.